United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: April 28, 2006

TO : Richard L. Ahearn, Regional Director
Region 19

Cathleen C. Callahan, Officer-in-Charge
Subregion 36

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IBEW Local 280
(Cherry City Electric, Inc.)
Case 36-CB-2612

530-5770-1200
530-5770-2500
530-8023-2500
530-8023-5000
554-1467-1275
590-7500
590-7587

This case was submitted for advice as to whether: (1) this Section 8(f) employer effectuated a timely withdrawal from multiemployer bargaining, and (2) the Union's refusal to bargain with the Employer on an individual basis violates Section 8(b)(3) of the Act. We conclude that the Region should dismiss the instant charge, absent withdrawal, because regardless of whether the Employer timely withdrew from multiemployer bargaining, the Union had no obligation to bargain with the Employer on an individual basis once the Section 8(f) multiemployer agreement expired.

FACTS

Cherry City Electric, Inc. (Employer) is an electrical contractor in Salem, Oregon. In May 1994, the Employer executed a letter of assent (Letter of Assent-A) authorizing the National Association of Electrical Contractors (NECA) to negotiate collective-bargaining agreements on its behalf with IBEW Local 280 (Union). Letter of Assent-A states, in pertinent part, that

> [t]his authorization … shall remain in effect until terminated by the undersigned employer giving written notice to … NECA and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

Pursuant to this authorization, NECA has entered into several multiemployer collective bargaining-agreements with the Union since 1994 to represent the Employer's Inside Wiremen and Apprentices. Since the most recent agreement

was effective from January 1, 2003 through December 31, 2005, the Employer would have been required to provide the Union and NECA with notice by August 3 if it wished to terminate the multiemployer bargaining relationship.[1] This and all prior agreements were Section 8(f) agreements.

On March 14, the Employer notified NECA in writing that it was withdrawing from NECA membership. The Employer did not specifically revoke NECA's authority to bargain under Letter of Assent-A. On May 10, the Employer handed a letter to the Union revoking NECA's bargaining authority under Letter of Assent-A. The Employer also sent the Union the same letter via regular mail. The Employer asserts that it sent NECA an identical letter revoking NECA's bargaining authority. That same day, the Union and Employer each apparently indicated it would bargain directly with the other on an individual basis. Around a week later, a Union representative informed a NECA representative that the Employer had provided a letter revoking Letter of Assent-A.

On August 29, NECA electronically mailed a survey to its employer members requesting input on the upcoming multiemployer negotiations. The Employer, which was included in the e-mail's distribution, responded by asking NECA if it wished to compare bargaining notes. On September 9, NECA told the Employer that it was bound to the upcoming multiemployer negotiations because the Employer had not revoked Letter of Assent-A with both NECA and the Union. On September 14, the Employer faxed NECA a copy of the May 10 letter to the Union and a copy of the same letter that it had purportedly sent to NECA. On September 22, NECA informed the Employer that it never received the May 10 letter and requested further evidence in support of the Employer's assertion that it revoked Letter of Assent-A.

On September 20, the Employer requested individual bargaining with the Union. On September 28, the Union responded that it would bargain with the Employer, but not until the Employer and NECA resolved their dispute as to whether the Employer had timely revoked the assent letter with NECA. On September 30, the Employer threatened to file charges if the Union continued to refuse to bargain individually with the Employer. On October 11, the Union and NECA commenced bargaining for a new multiemployer agreement to succeed the agreement due to expire on December 31. The Employer did not participate in those

[1] All dates are in 2005 unless otherwise indicated.

negotiations, which ended on October 26 with a successor contract effective January 1, 2006 to December 31, 2010.

ACTION

We conclude that the Region should dismiss the instant charge, absent withdrawal, because regardless of whether the Employer timely withdrew from multiemployer bargaining, the Union had no obligation to bargain with the Employer on an individual basis once the Section 8(f) multiemployer agreement expired.

Under the principles enunciated in Retail Associates, Inc.,[2] any party may withdraw from Section 9(a) multiemployer bargaining prior to the date set for negotiations or the date on which negotiations actually begin, provided that adequate notice is given.[3] However, parties to both Section 9(a) and 8(f) contracts may agree in advance to preclude withdrawal from such bargaining unless the association and union receive notice of withdrawal by an earlier date, for example, as here, 150 days prior to the expiration of the contract.[4] If the employer fails to comply with the terms of that advance agreement, it is bound to any successor collective-bargaining agreement entered into between the multiemployer association and the union.[5]

Upon the expiration of an 8(f) contract, either party may repudiate the 8(f) relationship.[6] It follows that absent mutually agreed-upon restrictions discussed above, after expiration of an 8(f) multiemployer agreement, a

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[2] 120 NLRB 388 (1958).

[3] See id. at 395.

[4] See, e.g., Positive Electrical Enterprises, 345 NLRB No. 67, slip. op. at 4 (2005); SAS Electrical Services, 323 NLRB 1239, 1243 (1998); Reliable Electric Co., 286 NLRB 834, 839 (1987).

[5] See Reliable Electric Co., 286 NLRB at 835 (employer was bound to successor collective bargaining agreement because evidence failed to show that it had provided the required 150-day notice).

[6] See John Deklewa & Sons, 282 NLRB 1375, 1377-78 (1987), enfd. 843 F.2d 770 (3d Cir., cert. denied 488 U.S. 889 (1988) (although parties may enforce an 8(f) agreement during its term, "upon expiration of such agreement … either party may repudiate the 8(f) bargaining relationship").

union that is party to that contract has no post-expiration Section 8(b)(3) duty to bargain.[7]

Here, the Employer agreed through Letter of Assent-A to provide 150-day written notice to both NECA and the Union of its intent to revoke NECA's authority to bargain on its behalf. The Employer asserts that it provided timely written notice to both the Union and NECA, thereby complying with Letter of Assent-A. NECA asserts that it never received the Employer's timely written revocation of Letter of Assent-A. We need not resolve the issue of whether the Employer provided timely notice because regardless of whether the Employer provided notice, the Union had no duty to bargain with the Employer on an individual basis once the multiemployer agreement expired. If the Employer failed to timely provide that notice, it would be bound to the successor multiemployer contract effective January 1, 2006 to December 31, 2010 pursuant to Letter of Assent-A. In that event, the Union would have no obligation to bargain with the Employer on an individual basis. If the Employer provided timely notice, the Union could lawfully refuse to bargain with the Employer on an individual basis because its bargaining obligations terminated as a matter of law with the expiration of the Section 8(f) agreement on December 31.[8] Accordingly, the

[7] See Gary Jasper Enterprises, 287 NLRB 746, 748 (1987) (no 8(b)(3) violation because unions had no obligation to negotiate successor agreements based solely on the existence of 8(f) relationships).

[8] See Gary Jasper Enterprises and John Deklewa & Sons, above.

Region should dismiss the instant 8(b)(3) charge, absent withdrawal.[9]

B.J.K.

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[9] The fact that the parties agreed to bargain with each other on May 10 does not result in an 8(b)(3) violation. See John Deklewa & Sons, 282 NLRB at 35 ("The enforceable Section 9(a) status we confer on signatory unions is also only coextensive with the bargaining agreement which is the source of its exclusive representation authority."). See also Houston Chapter, AGC, Advice Memorandum dated Feb. 23, 1988, Case 23-CA-10049 (fact that the employer voluntarily bargained for a new contract does not bring into play all of the obligations of Sections 8(a)(5) and 8(b)(3), which, in the 8(f) context, are only used to enforce an 8(f) agreement).